IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2741 OF 1997

Namdev K. Tulaskar ....Petitioner

V/s.

Zilla Parishad, Sindhudurg & Anr. ....Respondents

Mr.A.S. Khandeparkar for the Petitioner.

Mr.C.R. Sonawane, A.G.P. for Respondent Nos.1 and 2.

CORAM : R.M. LODHA, &
S.J. VAZIFDAR, JJ.
DATED : 14TH JULY, 2006.

P.C. :

The petitioner challenges the order of suspension dated 5/21.4.1997 in this writ petition.

2. The petitioner was appointed as Gramsevak in village Panchayat Marg Tamane, Taluka Chiplun, District Ratnagiri on 31.1.1997. In the year 1989-1990, District Ratnagiri was divided into two revenue districts Ratnagiri and Sindhudurg and upon formation of the district Sindhudurg, the petitioner was posted as Gramsevak of village Kolamb, Taluka Malvan, District Sindhudurg. In the year 1992, the petitioner was transferred to Mithmumbri and then in

the year 1994, he was transferred to village Torsole. While he was working as Gramsevak at Torsole, he is alleged to have misappropriated the amount of Rs.15,490/- of Javahar Employment Scheme. In the back-drop of this allegation, the order of suspension was issued on 5/21.4.1997 by the Chief Executive Officer, Zilla Parishad Sindhudurg under the Maharashtra Zilla Parishad Services (Discipline and Appeal) Rules, 1964 (for short "the Rules of 1964).

3. The suspension order is impugned inter-alia on the grounds that it came to be passed without giving any show cause notice to him to answer the allegations and that the allegations being in the nature of cognizable offence and for want of any criminal proceedings, suspension order could not have been issued.

4. None of the grounds raised in the writ petition challenging the suspension order has any merits. Neither the rules provide that before passing an order of suspension, show cause notice needs to be given to the delinquent, nor is there any requirement of law that requires that the show cause notice ought to have been given to the delinquent before passing the suspension order. The order of suspension has

been passed under Rule 3(1)(a) of the Rules of 1964 and the order is not in breach of the said Rules. The other contention that the allegations are in the nature of cognizable offence and that no criminal proceeding has been initiated against the petitioner and, therefore, suspension order could not have been issued, is devoid of any substance. There is no such bar in the Rules of 1964 that where the allegations are in the nature of cognizable offence, suspension order could not be issued.

5. The allegation against the petitioner is that he misappropriated the amount of Rs.15,490/- of the Javahar Employment Scheme. The allegation being quite serious, the order of suspension cannot be said to suffer from any illegality.

6. From the reply affidavit, it appears that even on earlier occasion during the years 1989-1990 to 1993-1994, the petitioner misappropriated an amount of Rs.9156/- while he was working as Gramsevak at village Mandban, Taluka Rajapur. Then again he is alleged to have misappropriated an amount of Rs.3120=60. Further during the period from 1986-1987 to 1989-1990 while he was working as Gramsevak at village Ranjanwadi, Taluka Rajapur, the petitioner is said to have been suspended

earlier and has also been warned for his misconduct and fine was also awarded. The misappropriation of the public fund by the public servant is a serious misconduct and the petitioner allegedly indulged into the act of misappropriation on several occasions and, therefore, the order of suspension cannot be said to be not warranted.

7. Mr.A.S. Khandeparkar, counsel for the petitioner submitted that the petitioner retired in the year 2000 and that until date, no disciplinary proceeding has been initiated to enquire into the allegations of misappropriation of the amount of Rs.15,490/- by the petitioner.

8. If the disciplinary proceedings have not been initiated against the petitioner so far, the petitioner must not have any grievance. As and when the disciplinary proceedings are initiated against the petitioner, he may take appropriate steps to challenge the same in accordance with law if so advised. However, the suspension was founded on serious allegations and we find no justification to interfere with the said order. Rule is discharged. No costs.

(R.M. LODHA, J.)

(S.J. VAZIFDAR, J.)